Supreme Court, U.S.
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No: 05-811

In the

Supreme Court of the United States

LILLIAN BULLARD

Petitioner,

V.

INKSTER HOUSING AND REDEVELOPMENT COMMISSION, TONY LOVE, MELODY COFFEE, LEOTYNE MONTGOMERY, FLOYD SIMMONS, AND EARNESTINE CARTER,

Respondents.

On petition for writ of certiorari from the United States Sixth Circuit Court of Appeals, 04-1051

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

DID THE UNITED STATES SIXTH CIRCUIT COURT OF APPEALS MISAPPLY THE HOLDING OF THIS SUPREME COURT IN DESHANEY IN OPPOSITION TO THE MULTITUDE OF OTHER CIRCUIT COURTS WHEN IT DETERMINED THAT RESPONDENT DID NOT ACT WITH DELIBERATE INDIFFERENCE TOWARD PETITIONER UNDER A STATE CREATED DANGER THEORY OF SUBSTANTIVE DUE PROCESS VIOLATION WHEN RESPONDENTS REMOVED PETITIONER'S DEADBOLT LOCK WHILE ITS OWN POLICIES FREELY DISTRIBUTED MASTER KEYS TO THE CRIME RIDDEN HOUSING COMPLEX, CAUSING PETITIONERS RAPE AND ATTEMPTED MURDER?

The District Court says, NO.
The United States Sixth Circuit Court says, NO
Respondent says, NO.
Petitioner says, YES.

IN THE SUPREME COURT
OF THE UNITED STATES

LILLIAN BULLARD, CASE NO:

Petitioner, US Sixth Circuit No: 04-1051

V E.D. Mich. No. 02-CV-74608

INKSTER HOUSING
AND REDEVELOPMENT COMMISSION, et al.

Respondents.

DISCLOSURE OF CORPORATE
AFFILIATIONS AND FINANCIAL INTERESTS

Pursuant to Rule 29, Lillian Bullard makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? **NO**

If the answer is "yes," list below the identity of the parent corporation or affiliate and the relationship between it and the named party.

2. Is there a publicly owned corporation, not a party to the case, that has a financial interest in the outcome? **NO.**

If the answer is "yes," list below the identity of the corporation and the nature of the financial interest.

Richard H. Morgan, Jr. 12-14-05

Richard H. Morgan, Jr. **Date**

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OPINIONS BELOW

The June 20, 2005 decision of the Court of Appeals Denying Rehearing En Banc is not reported (APX C). The decision of the Court of Appeals on the Merits (APX A) is reported at 126 Fed Apx. 717 (2005). The decision of the District Court (APX B) addressing the State Created Danger/Civil Rights issue is unreported.

JURISDICTION

On June 20, 2005, the Court of Appeals denied plaintiff's timely petition for rehearing en banc. The Court of Appeals original opinion was entered March 29, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 USC § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state of Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act of omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress

applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

U.S. Const. Art. V provides in relevant part:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Art. XIV provides in relevant part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This substantive due process case began with the brutal rape and attempted murder of 62-year-old Lillian Bullard at the Twin Towers housing project located in Inkster, Michigan. Ms. Bullard was attacked in her own apartment after the defendant Inkster Housing Commission forced Ms. Bullard to remove her deadbolt lock from her door, and refused to repair her door chain lock which was too long to be effective. Despite the knowledge that various vagrants and criminals would enter the premises, defendants had a policy of allowing access to the master keys to the entire housing complex, including other buildings, to almost anyone. Despite locking her door and windows, Ms. Bullard's rapist entered her apartment, ostensibly by the use of one the various unaccounted for master keys. The U.S. District Court for the Eastern District of Michigan granted summary judgment to defendants, rationalizing that the state actors' actions did not amount to deliberate indifference to Ms. Bullard's civil rights. The U.S. Court of Appeals for the Sixth Circuit affirmed. The decision rests on an erroneous interpretation of the due process clause of the United States Constitution, conflicts with interpretation of this and other courts, and raises an important question of law warranting this court's plenary review.

1. Background

Lillian Bullard was a resident at the Twin Towers Housing project in the City of Inkster Michigan on November 21, 2000. Inkster Housing and Redevelopment Commission ("IHRC"), and its employs, were responsible for the administration, maintenance, management, and security of the Twin Towers building, and received federal funding from the Department of Housing and Urban Development.(APX, 27)

Residents of the project were required to meet federal guidelines for residence by age and income. The lease agreement was rife with resident obligations, raising expectations that residents would be in an otherwise safe haven in the otherwise crime-ridden neighborhood. IHRC promised to maintain the premises in a safe condition and to comply with all regulations.(APX, 27-28)

However, Twin Towers was not remotely safe. It had received various failing grades for screening of applicants, security, and inspections, and was referred to HUD's Troubled Agency Recovery center. A plethora of residents who did not meet the age and income requirements were allowed to move in. The former typist for the office was promoted to acting manager of the complex despite having no experience. Criminal background checks were not performed, despite the express policy.

Although residents were charged a monthly guard fee, no guards were present; rather, the money was paid to residents to basically be hall monitors. A door buzzer system was used for entry to the front door; however, the desk that monitored the door was often unstaffed or staffed by residents who were lax in their duties. Strange men often loitered near the front door, and the desk visitor log was not monitored. One of the master keys which would allow entrance to any apartment in Twin Towers, as well as any apartment within the IHRC system was simply left in a drawer at the desk.[APX 33-34]

IHRC knew of the lax policy regarding the master keys, as well as the existence of various unaccounted-for master keys. Indeed, IHRC did not even keep any records on the number or whereabouts of the master keys. The IHRC Director admitted that he did not even know what a master key was. Various individuals, such as outside contractors, barred tenants, and current tenants all possessed keys.[APX 18]

Regardless of the ineffectiveness of the front door security, access to the building was easily obtained through the ground level doors which were often propped open, a fact which Ms. Bullard specifically complained about to management. Fire doors were left propped open, and the alarms wires cut, for months. First floor windows had no locks.

This lack of security allowed various strangers to enter the building. Vagrants were found sleeping in stairwells and camped out in the laundry room; even the hall monitors were afraid to go the basement where the "crackheads, homeless, and squatters lived." Various individuals had let themselves into residents apartments with keys.[APX 34]

Residents complained of the security concerns at resident meetings, to no avail. Ms. Bullard attempted to make her apartment as safe as possible. She placed rods in her windows to prevent their opening; further, her apartment already had a deadbolt lock installed when she moved in. She also had a chain lock, which was woefully too long to prevent its disabling by a person outside of the door.

This momentary safety was short lived after employees of IHRC, on direct orders, removed all of the deadbolts from the doors in Twin Towers. Further, Ms. Bullard put in a work order to maintenance to fix the door chain, which went unanswered.[APX 18, 34]

On November 21, 2000, the inevitable happened. Ms. Bullard locked her windows with wooden rods, locked her door, enabled her chain lock, and took a nap. She was awakened when an unknown intruder peered inside her bedroom door. The intruder raped and sodomized the woman, then tried to strangle her with a vacuum cord. When this was unsuccessful, he stabbed her repeatedly. She survived her wounds after crawling out to the hallway and being discovered by a neighbor.

2. **Initial Proceedings in District Court**

Petitioner filed suit in the U.S. District Court, Eastern District of Michigan, against the IHRC and its employees Tony Love, Melody Coffee, Leontine Montgomery, Floyd Simmons, and Earnestine Carter (who were involved in various management and supervisory roles) in Case No. 2002-74608 before Hon. District Judge Robert H. Cleland on November 19, 2002. The complaint was amended twice, culminating with the second Amended Complaint filed September 15, 2003.

Petitioner alleged a violation of her civil rights to liberty and bodily integrity pursuant to the due process clauses of United States Constitution and 42 USC § 1983. Petitioner also alleged a violation of procedural due process based upon property interests from residency in a government funded housing project pursuant to 42 USC § 13601 et seq, although that claim is not on appeal in this petition and was abandoned at the U.S. Sixth Circuit proceedings. Petitioner also alleged state law claims of breach of contract, gross negligence, violation of state housing law, and violation of state consumer act protections, also not on appeal in this petition.[APX 28]

After voluminous discovery, defendants filed their motion for summary judgement. No oral argument was undertaken, and the court rendered its decision on November 26, 2003. The Court granted defendants' motion in part, holding that no special relationship existed between Ms. Bullard and the IHRC that would render her unable to defend herself. The Court also held that the ostensibly affirmative acts of giving out master keys to residents and removing the deadbolts did not create a state created danger to Ms. Bullard because it did not rise to the level of a special danger toward Ms. Bullard, nor did it create an atmosphere of deliberate indifference to a known danger to plaintiff individually.[APX, 37]